IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17975 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAKESHKUMAR SOMABHAI RATHOD - Petitioner(s)

Versus

STATE OF GUJARAT & 9 - Respondent(s)

==========

Appearance :

MR VC VAGHELA for Petitioner(s) : 1,
Mr. M.R. Mengdey, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2,5 - 10.
MR PRANAV V SHAH for Respondent(s) : 3 - 4.
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

Rule. With the consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Development

Commissioner, State of Gujarat dated 27.6.2005 by which the Development Commissioner has withdrawn the show cause notice issued for dissolving the Vagra Gram Panchayat on the ground that the budget was not passed/approved by the said Taluka Panchayat before 31st March 2005 as contemplated under Section 138(3) of the Gujarat Panchayat Act, 1993 [hereinafter referred to as "the Act"]

2. Heard Shri V.C. Vaghela, learned advocate, appearing for the petitioner; Shri MR Mengdey, learned AGP appearing for and on behalf of respondents No. 1 and 2; Shri Pranav Shah, learned advocate appearing on behalf of respondents No. 3 and 4. Though served, nobody appears on behalf of respondents No. 5 to 10.

3. Vagra Taluka Panchayat is constituted under the provisions of the Gujarat Panchayat Act, 1993, and under the provisions of the said Act every Taluka Panchayat under Section 138 has to prepare its budget. Section 138 of the Act reads as under :

> "138. Annual budget estimates:-
>
> (1) Every taluka panchayat shall have prepared annually on or before the 15th December of the current year or such date not later than 31st December of the current year as may be approved by the District Panchayat, in such form and

manner as may be prescribed in this behalf a budget estimate of its income and expenditure for the next year and forward it to the district panchayat on or before -

(a) the 31st December of the current year where the budget estimate is prepared on or before the 15th December of the current year, or,

(b) the 15th January of the current year where the budget estimate is prepared after the 15th December of the current y ear but on or before the said approved date :

Provided that the budget estimate shall be so prepared that at the end of the year the panchayat shall have at its credit a balance of not less than such minimum amount as may be prescribed in that behalf.

(2) The district panchayat shall scrutinize the budget estimate and return it to the panchayat within two months of its receipt with such observations and recommendations as it may make in respect of the budget estimate.

(3) The taluka panchayat shall thereupon approve the budget estimate on or before the 31st March of the current year with such modifications as it may think fit having regard to the observations and recommendations made by the panchayat under sub-section (2).

> (4) Where any taluka panchayat has failed to comply with the provisions of sub-section (3) it shall be lawful for the State Government to form an opinion that the panchayat is incompetent to perform the duties imposed on it or functions entrusted to it under the provisions of this Act."

4. It is the case on behalf of the petitioner that for the year 2005-2006 the budget was to be got sanctioned before 31st March 2005; necessary procedure was followed by the Taluka Panchayat; and budget estimated were prepared and sent for approval to the District Panchayat, Bharuch. It is also the case on behalf of the petitioner that the District Panchayat within the stipulated time returned the budget estimate to the Taluka Panchayat with its suggestions and thereafter it was obligatory upon the Taluka Panchayat to get the budget sanctioned before 31st March 2005. It is the case on behalf of the petitioner that the Taluka Panchayat issued an Agenda for the meeting to be held on 28th March 2005 for obtaining approval and sanctioning the budget for the year 2005-2006 and the said meeting was held on 28th March 2005 under the Chairmanship of President of Taluka Panchayat wherein out of 14 members, 11 members had remained present. It is the case on behalf of the petitioner that in the said meeting Resolution No. 126 being Subject No.5 regarding approval of the budget was discussed and after discussion 4 members cast their votes in

favour approving the budget whereas 7 members cast their votes against sanction/approval of the budget and therefore the Taluka Panchayat, Vagra, failed to approve the budget for the year 2005-2006. It appears that the proceedings of the said meeting were forwarded to the District Development Officer, Bharuch; the said subject was discussed in the meeting of the District Panchayat held on 29th March 2005; Resolution No. 538, Subject No. 8(5) was taken up for consideration of the District Panchayat; and the District Panchayat unanimously resolved to make a proposal to the Development Commissioner to initiate proceedings under Section 253 and to dissolve the Vagra Taluka Panchayat. After the proposal under Section 253 was made to the Development Commissioner, the Development Commissioner issued show cause notice by letter dated 2/3.5.2005, and again on 23rd May 2005 the meeting of the Vagra Panchayat was held and the said letter/show cause notice was taken into consideration as Subject No.3; again Resolution No. 133 was moved for approving the budget for the year 2005-2006 and 5 members cast their votes in favour of approval of the budget whereas six members voted against the budget and therefore even in the said meeting also the budget could not be approved. It is the case on behalf of the petitioner that the hearing of the aforesaid show cause notice was fixed by the Development Commissioner on 25.5.2005 and the Taluka Development Officer and the President of the Taluka Panchayat, Vagra, remained present before the

Development Commissioner and requested for time and time was granted upto 21.6.2005. It appears that again the Agenda was issued on 4.6.2005 for holding the meeting on 13th June 2005 to approve the budget for the year 2005-2006. It is the case on behalf of the petitioner that the petitioner and other members objected against holding of such meeting before the District Development Officer at Bharuch and also made an application for restraining the Vagra Panchayat from holding such meeting but the District Development Officer rejected the application of the petitioner by order dated 9.6.2005. It is the case on behalf of the petitioner that as the said meeting was illegal the petitioner and his supporters refrained themselves from attending the meeting dated 13.6.2005 of the Taluka Panchayat, Vagra and they gave an application to the Taluka Development Officer at Vagra and did not participate in the meeting. It is the case on behalf of the petitioner that the Taluka Development Officer refused to stay the meeting by order dated 13th June 2005 and thereafter the meeting was held where only six members remained present and ex-parte approved the budget for the year 2005-2006. Thereafter, on 21.6.2005 the proceedings of the meeting dated 13th June 2005 were produced before the Development Commissioner and the Development Commissioner by impugned order dated 27th June 2005 withdrew the show cause notice issued under Section 253 of the Act on the ground that subsequently the budget is already approved and as held by this Court in the case of

Thasra Village Panchayat Vs. P.D. Vaghela, 2003 (1) GLR Page 676, approving the budget prior to 31st March is not mandatory and the Panchayat can approve the budget even after 31st March. Being aggrieved and dissatisfied with the order passed by the Development Commissioner, State of Gujarat, dated 27th June 2005 in withdrawing the show cause notice issued under Section 253 of the said Act, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

5. Shri VC Vaghela, learned advocate appearing on behalf of the petitioner, has vehemently submitted that the order passed by the Development Commissioner in withdrawing the notice under Section 253 of the Act is not only illegal and contrary to the provisions of Section 138 read with Section 253 of the Act but the same is on misreading of the Judgment of this Court in the case of *Thasra Village Panchayat (supra).* It is submitted that this Court in the aforesaid Judgment has never held that even after 31st March the budget can be approved and that passing of the budget before 31st March is not mandatory. He has further submitted that what is held by the learned Single Judge of this Court in the aforesaid judgment is that there is no mandatory provision for passing the budget within the stipulated time or else failure to pass the budget within the stipulated time will result into

automatic dissolution/supersession of the Panchayat and it is further held that Section 253 of the Act enables the Government to form an opinion that such Panchayat is not competent to perform its function and in a given case, if a Panchayat is able to show satisfactorily that there was a genuine reason for not passing the budget within the stipulated time, it is always open for the State Government to consider such ground while passing the ultimate order under Section 253 of the Act. It is submitted by Shri Vaghela that while withdrawing the notice under Section 253 of the Act the Development Commissioner has stated that this Court has held that passing of the budget before 31st March is not mandatory and the budget can be approved subsequent to 31st March and therefore when the budget is approved after 31st March the notice is required to be withdrawn, which, according to Shri Vaghela, is contrary to the provisions of Section 253 read with Section 138 of the Act and also on misreading of the Judgment of this Court. It is, therefore, requested to allow the present Special Civil Application and to quash

and set aside the order passed by the Development Commissioner.

6. Per contra, Shri MR Mengdey, learned AGP has tried to support the order passed by Development Commissioner by submitting that as subsequently the

budget was approved there was no purpose in continuing the proceedings under Section 253 of the Act more particularly when it is held by this Court that approving/sanctioning of the budget before 31st March is not mandatory and in a case where the Panchayat fails to pass the budget within the stipulated time, i.e., upto 31st March of the current year that will not, ipso facto result in dissolution or supersession of the Panchayat. He has also further submitted that as held by this Court in the aforesaid judgment it is ultimately for the State Government to form an opinion whether the said Panchayat is competent to perform its function or not. Therefore it is requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. As per Section 138 of the Act, every Taluka Panchayat shall approve the budget estimate on or before 31st March of the current year after following necessary procedure as required under sub-section (1) (2) of Section 138. As per sub-section (4) of Section 138, where any Taluka Panchayat has failed to comply with the provisions of sub-section (3), meaning thereby if the Taluka Panchayat fails to approve the budget estimate on before 31st March of the current year, it shall be lawful for the State Government to form an opinion that the Panchayat is incompetent to perform the duties imposed on it or functions entrusted to it under the provisions of the Act. Therefore, as such the Taluka Panchayat is required to approve the budget estimate on or before 31st March of the current year, and, in the present case, on

or before 31st March 2005. Section 253 of the Act confers power upon the State Government to dissolve such Panchayat or supersedes such Panchayat for the purpose specified in the order after forming an opinion that either the Panchayat exceeds or abuses its power or it is incompetent to perform or make persistent default in the performance of the duties imposed on it or functions entrusted to it under any provision of the Act, in the present case under Section 138 of the Act. As stated hereinabove, twice efforts were made by the Vagra Taluka Panchayat to approve the budget and when the budget estimate was not approved, the District Development Officer referred the matter to the Development Commissioner exercising the powers under Section 253 of the Act. During the pendency of the said proceedings and after the Development Commissioner adjourned the hearing again the meeting was called to approve the estimate of budget and at the 3rd trial the budget estimate came to be approved in the month of June 2005. Relying upon the judgment of the learned Single Judge of this Court in the case of *Thasra Village Panchayat (supra)* and in total misreading of the said judgment the Development Commissioner considered that as held by the learned Single Judge of this Court passing of the budget before 31st March is not mandatory and that even if the budget is passed subsequently it is legal and valid and therefore the notice under Section 253 is required to be withdrawn and accordingly the Development Commissioner withdrew the notice issued under Section 253 of the Act. Now, therefore, this Court is required to consider the Judgment of the learned Single Judge of this Court in

the case of Thasra Village Panchayat (supra) in light of the ratio laid down in that case. On going through the said decision in the case of *Thasra Village Panchayat (supra),* it appears that the Development Commissioner has totally misread the said Judgment. What is considered by the learned Single Judge of this Court in the aforesaid case is whether in case a Panchayat fails to pass the budget within the stipulated time, i.e., upto 31st March of the current year, that will, *ipso facto* result in dissolution or supersession of the Panchayat, or, in a given case a discretion can be exercised by the State Government not to effect its dissolution/supersession ? In that case, the Court was considering the provision of Section 116 of the Gujarat Panchayat Act which is *pari materia* to Section 138 which is applicable to the Taluka Panchayat. Considering the provision of Section 116 of the Act read with Section 253, the learned Single Judge has held that even though a Panchayat is required to pass a budget by 31st March of a current year, in case it fails to do, it is always open for the State Government to consider whether such non-passing was with or without any valid reasons and that in that circumstances non-passing of the budget before 31st March is held to be not a mandatory provision and that ultimately it is for the Government to form an opinion considering the facts on record and in a given case if a Panchayat is able to show satisfactorily that there was a genuine reason for not passing the budget within the stipulated time, it is always open for the State

Government to consider such ground while passing the ultimate order under Section 253 of the Act. The relevant paragraph of the aforesaid decision reads as under:

> "In view of the provisions of the Act of 1993, the State Government is empowered to form an opinion about the incompetence of such Panchayat to perform its duty, in case it is found that the Panchayat failed to pass the budget within the stipulated time. Accordingly, the Government is entitled to form an opinion to the effect that the Panchayat has failed to pass budget within the stipulated time, and therefore, it is incompetent to perform its functions. On the basis of forming of such an opinion, naturally, powers are required to be exercised under Sec. 253 of the Act for the purpose of dissolution or supersession of such Panchayat. However, there is nothing in Sec.116 to suggest that moment a particular Panchayat fails to pass the budget within the stipulated time, it is required to be dissolved straightaway. It only enables the Government to form an opinion that such Panchayat is not competent to perform its function, on the basis of which proceedings can be initiated under Sec. 253 of the Act. In a given case, if a Panchayat is able to show satisfactorily that there was a genuine reason for not passing budget within the stipulated time, it is always open for the State Government to consider such ground for passing the ultimate order under Sec. 253 of the Act.

> The fact that the hearing aspect is contemplated under Sec. 253 itself suggests that there is no mandatory provision for passing budget within the stipulated time, or else, failure to pass the budget within the stipulated time will result in automatic dissolution/supersession of a Panchayat. When there is a contemplation of hearing, it can always be presumed that there is always a discretion with the authority, because, in a given case, after giving hearing, the Government may change its opinion and may even condone the lapse on the part of a Panchayat if the Government is satisfied that there was a genuine reason for not passing the budget. Under these circumstances, even though a Panchayat is required to pass a budget by 31st March of a current year, in case it fails to do so, it is always open for the State Government to consider whether such non-passing was with or without any valid reasons. It may be mentioned that once the hearing is afforded, it is clear that it cannot be said to be a mandatory provision. Otherwise, if there is a mandate that moment budget is not passed, the Panchayat is required to be dissolved, then there is hardly any relevance for affording hearing."

It is, thus, clear from the above observations of this Court in the said decision that this Court has not laid down the proposition that if a budget estimate is passed even after 31st March no action

under Section 253 of the Act is required to be taken. It is also not held by this Court in the aforesaid Judgment that passing of the budget before 31st March is not mandatory and it can be passed even after the stipulated time, i.e., 31st March of the current year, as considered by the Development Commissioner in the impugned order. What this Court has held in the aforesaid decision is that non-passing of the budget within the stipulated time, i.e., before 31st March of the current year will not *ipso facto* result in dissolution or supersession of the Panchayat and in a given case the Panchayat can show satisfactorily that there was a genuine reason for not passing the budget within the stipulated time and that on considering the same the State Government can form an opinion whether such Panchayat is required to be dissolved and/or superseded or not. Even in the said case, finally, the learned Single Judge remanded the matter to the Development Commissioner for reconsideration in light of the reasons for not passing the budget on or before 31st of March. In the present case, as stated hereinabove, on misreading the Judgment of the learned Single Judge of this Court in the aforesaid case, the Development Commissioner withdrew the notice under Section 253 of the Gujarat Panchayat Act by holding that in view of the budget passed subsequently the same is permissible which cannot be sustained and the same is required to be quashed and set aside. It was incumbent on the part of the Development Commissioner to consider reasons for not passing of the budget on

or before 31st March 2005 and on the basis of which the State Government was required to form an opinion. The matter is, therefore, required to be remanded to the Development Commissioner for deciding the same afresh after calling upon the Panchayat to show satisfactorily that there was a genuine reason for not passing the budget within the stipulated time and thereaftr to form an opinion as required under Section 253 of the Act.

8. For the reasons stated above, the petition succeeds. The impugned order dated 27.6.2005 passed by the Development Commissioner withdrawing the notice under Section 253 of the Gujarat Panchayat Act, 1993, against the Taluka Panchayat, Vagra, is hereby quashed and set aside. The matter is remanded to the Development Commissioner for deciding the matter afresh in light of the observations made hereinabove and to pass an appropriate order in accordance with law and on merits as early as possible preferably within the period of 3 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.